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10/816,712	04/02/2004	Dennis Piper	FULLN014USPT02	1186
23403 7590 02/04/2011 SHERRILL, LAW OFFICES 4756 BANNING AVE SUITE 212 WHITE BEAR LAKE, MN 55110-3205				
EXAMINER SUTTON, ANDREW W				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/816,712
Filing Date: April 02, 2004
Appellant(s): PIPER ET AL.

Michael S. Sherrill
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 8, 2010 appealing from the Office action mailed May 12, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1-18 and 20 are pending

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office

action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

3,171,133	Steffen	3-1965
6,625,820	Lampe	9-2003
1,638,756	Wallman	8-1927
4,741,054	Mattes	5-1988
6,397,399	Lampe	6-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 20 is rejected under 35 U.S.C. 102(a) as being anticipated by Lampe (US 6,625,820). Lampe teaches a headguard comprising a front piece 23t with a front pad 20 and a rear piece 33t with a rear pad 30 that is attached via a diametrically opposed pivot point 40.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampe (US 6,625,820) in view of Wallman (US 1,638,756). Lampe teaches a headgear with a protective pad 20 with retention members 41 and 42 both extending laterally across the forehead and attached to the pad that have two separate and distinct tensioned and diametrically intersecting circumferential lines of retention when worn on the head. Lampe does not teach the circumferential lines intercepting. Wallman teaches a headgear with intercepting lines of retention 12 and 13. It would have been obvious to one of ordinary skill in the art to modify the teaching of Lampe with that of Wallman to reduce the footprint of the headgear on the wearer.

As to claims 2, 3, and 10-11, Gilson teaches the bands 41 and 42 are neoprene and would be elastic.

As to claims 4 and 12, the straps 41 and 42 include length adjusting means 90 for adjusting the length of each strap.

As to claims 5 and 13, the straps 41 and 42 are capable of intercepting proximate to the temple.

As to claim 6, the straps 41 and 42 are capable of running above and below the occipital bone, respectively.

As to claim 7, the straps 42 and 43 are capable of being adjusted with respect to the angle in relation to each other.

As to claim 8, the intersection points are capable of being circumferentially shifted.

Claims 14-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen (US 3,171,133) in view of Lampe et al (US 6,397,399). Steffen teaches headgear with a rear protective portion 50 and a front protective piece 12 and a retention element "elastic strap 22" interconnecting the front and rear portions. The front and rear portions have a pad 50 placed within the cover 52. Steffen does not teach the use of multiple pads. Lampe teaches a headgear comprising a front portion having multiple protective pads 6. It would have been obvious to one of ordinary skill in the art to modify the teaching of Steffen with that of Lampe to provide the headgear and better fit on the wearer of the device due to the pads freedom to contour the wearer's head (via shifting).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Steffen (US 3,171,133) in view of Lampe et al (US 6,397,399) in further view of Mattes.

Steffen/Lampe teaches the device substantially above. They do not teach the use of length adjusting means. Mattes teaches straps 20 and 26 with length adjusting means 24 and 28. It would have been obvious to one of ordinary skill in the art to modify the teachings of Steffen/Lampe with that of Mattes as it is well known in the art to provide adjustment means on straps to provide fit to a range of wearer's.

(10) Response to Argument

The appellant argues the rejection of claim 20, stating that the front 23t and rear 33t pads of Lampe are connected via the upper and lower straps and would prevent pivoting of the one piece relative to the other. The examiner disagrees with this as the connection as stated are flexible straps and would allow for the front pad to pivot independently of the rear pad at a pivot point via the connecting strap 40. If the pad 20 is held in the left hand and the pad 30 is held in the right hand and moving pad 20 and pad 30 toward and away from each other would result in pivotal and independent movement of the front (20) and the rear (30) elements.

As to the rejection of claims 1-13, the Appellant argues that Lampe (820) teaches away from the substitution of Wallman because Lampe teaches that comfort, fit, retention and protection is improved by providing one strap that encircles the head above the occipital and frontal bones, and another that encircles the head below the occipital and frontal bones (See col. 6 lines 50-64). The examiner disagrees with this as even with the combination of Lampe with Wallman, the straps are fully capable of being placed in the stated location. The examiner was

only taking the teaching of the intercepting straps from Wallman to reduce the footprint on the head of the wearer, as clearly stated in the rejection.

The appellant argues the rejection of claims 14-18, stating that the size and shape of the forehead pad of Steffan would not be used to cover the back of the head due to the shape of the occipital bone are of the back of the head. Due to the different characteristics to the front of the head and back of the head, the appellant, further states that one pad configured for one of the areas is seldom used to protect the other. The examiner agrees that the multiple pads 6 of Lampe (399) were stated for use in the front portion. However, it was the teaching of the multiple pads that was used to modify the reference of Steffan, not the specific structure of the pads. As stated in the rejection, it would have been obvious to one of ordinary skill in the art to modify the front multiple pad teaching of Lampe with the Steffan reference.

(11) Related Proceeding(s) Appendix

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andrew W. Sutton/

Examiner, Art Unit 3765

Conferees:

/GARY L. WELCH/

Supervisory Patent Examiner, Art Unit 3765

Art Unit: 3765

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782